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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2011-0713; FRL-9504-9]**

**Approval and Promulgation of Air Quality Implementation Plans; Delaware, Maryland, New Jersey, and Pennsylvania; Determinations of Attainment of the 1997 8-Hour Ozone Standard for the Philadelphia-Wilmington-Atlantic City Moderate Nonattainment Area and Withdrawal of Attainment Demonstration Proposed Disapprovals**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule and withdrawal of proposed rule.

**SUMMARY:** EPA is proposing to make two determinations regarding the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 8-hour ozone moderate nonattainment area (the Philadelphia Area). First, EPA is proposing to make a determination that the Philadelphia Area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). This proposed determination is based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2008 - 2010 monitoring period. If this proposal is made final, the requirement for the Philadelphia Area to submit certain planning requirements related to the attainment of the 1997 8-hours ozone NAAQS shall be suspended for so long as the area continues to attain the 1997 8-hour ozone NAAQS. Although these requirements are suspended, EPA is not precluded from acting upon these elements at any time if submitted to EPA for review and approval. Second, EPA is also proposing to determine that the Philadelphia Area has attained the 1997 8-hour ozone NAAQS by its attainment date of June 15, 2011. Finally, EPA is withdrawing the May 8, 2009 proposed disapprovals of the attainment demonstrations for the Philadelphia Area, based on the ambient air quality monitoring data demonstrating attainment. These actions are being taken

under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before [insert date 30 days from date of publication].

**ADDRESSES:** Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2011-0713** by one of the following methods:

A. [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.

B. E-mail: [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov)

C. Mail: EPA-R03-OAR-2011-0713, Cristina Fernandez, Associate Director, Office of Air Quality Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. **EPA-R03-OAR-2011-0713**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through

[www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

***Docket:*** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:** If you have questions concerning EPA's proposed action related to Delaware, Maryland or Pennsylvania, please contact Maria A. Pino (215) 814-2181, or by e-mail at [pino.maria@epa.gov](mailto:pino.maria@epa.gov). If you have questions concerning EPA's proposed action related to New Jersey, please contact Paul Truchan (212) 637-4249, or by email at [truchan.paul@epa.gov](mailto:truchan.paul@epa.gov).

**SUPPLEMENTARY INFORMATION:** For detailed information regarding this proposal, EPA prepared a Technical Support Document (TSD). The TSD can be viewed at

<http://www.regulations.gov>. The following outline is provided to aid in locating information in this action.

- I. What is EPA Proposing?
- II. What Proposed Rule is EPA Withdrawing?
- III. What is the Background for these Actions?
- IV. What are the Effects of these Proposed Actions?
- V. What is EPA's Analysis of the Relevant Air Quality Data?
- VI. Proposed Actions.
- VII. Withdrawal Action.
- VIII. Statutory and Executive Order Reviews

### **I. What is EPA Proposing?**

Pursuant to sections 181(b)(2)(A) and 179(c) of the CAA, EPA is proposing to determine that the Philadelphia Area attained the 1997 8-hour ozone NAAQS by its attainment date, June 15, 2011. This proposed determination is based upon complete, quality assured, and certified ambient air monitoring data from 2008-2010 that show the area has monitored attainment of the 1997 8-hour ozone NAAQS during this monitoring period.

EPA is also proposing to make a determination that the Philadelphia Area has attained the 1997 8-hour NAAQS. This proposed determination is based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2008-2010 monitoring period. Once this proposal becomes final, the requirement for this area to submit an attainment demonstration, reasonably available control

measures (RACM), a reasonable further progress (RFP) plan, and contingency measures related to attainment of the 1997 8-hour ozone NAAQS shall be suspended for so long as the area continues to attain the 1997 8-hour ozone NAAQS. Although these requirements are suspended, EPA is not precluded from acting upon these elements at any time if submitted to EPA for review and approval. The States of Delaware and Maryland, and the Commonwealth of Pennsylvania submitted these SIP elements for their portions of the Philadelphia Area to EPA for review and approval in June 2007. The State of New Jersey submitted these SIP elements for its portion of the Philadelphia Area to EPA for review and approval in October 2007.

On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 parts per million (ppm). This action addresses only the 1997 8-hour ozone standard of 0.08 ppm, and does not address any subsequently revised 8-hour ozone standard.

## **II. What Proposed Rule is EPA Withdrawing?**

On May 8, 2009, EPA proposed disapproval of Delaware's, Maryland's, New Jersey's and Pennsylvania's 8-hour ozone attainment demonstrations for the Philadelphia Area. See 74 FR 21599, 74 FR 21588, 74 FR 21578, and 74 FR 21604, respectively. Based on the monitored air quality data demonstrating attainment of the 1997 8-hour ozone NAAQS, EPA is withdrawing the May 8, 2009 proposed disapprovals of the attainment demonstrations. The Docket ID Numbers for the proposed disapprovals are EPA-R03-OAR-2008-0930, EPA-R03-OAR-2008-0929, EPA-R02-OAR-2008-0497, and EPA-R03-OAR-2008-0928, respectively.

## **III. What is the Background for these Actions?**

### **A. The Philadelphia Area**

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 ppm averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time, than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. Among those nonattainment areas is the Philadelphia Area. The Philadelphia Area includes the entire State of Delaware; Cecil County in Maryland; Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem Counties in New Jersey; and Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania. The Philadelphia Area was classified as a moderate nonattainment area. See 40 CFR 81.808, 81.321, 81.331, and 81.339.

Moderate areas are required to attain the 1997 8-hour ozone NAAQS by no later than six years after designation, or June 15, 2010. See 40 CFR 51.903. However, the Philadelphia Area qualified for a 1-year extension of its attainment date, based on the complete, certified ambient air quality data for the 2009 ozone season. On January 21, 2011, EPA approved a 1-year extension of the Philadelphia Area's attainment date, from June 15, 2010 to June 15, 2011. See 76 FR 3838 and 76 FR 3840.

## **B. Requirement to Determine Attainment by the Attainment Date**

Under CAA sections 179(c) and 181(b)(2), EPA is required to make a determination that a nonattainment area has attained by its attainment date, and publish that determination in the Federal Register. Under CAA section 181(b)(2), which is specific to ozone nonattainment areas, if EPA determines that an area failed to attain the ozone NAAQS by its attainment date, EPA is required to reclassify that area to a higher classification.

## **C. Clean Data Determination**

Under the provisions of EPA's ozone implementation rule (see 40 CFR section 51.918), if EPA issues a determination that an area is attaining the relevant standard (through a rulemaking that includes public notice and comment), it will suspend the area's obligations to submit an attainment demonstration, RACM, RFP, contingency measures, and other planning requirements related to attainment for as long as the area continues to attain. The determination of attainment is not equivalent to a redesignation. The state must still meet the statutory requirements for redesignation in order to be redesignated to attainment.

## **D. Ambient Air Quality Monitoring Data**

Complete, quality assured, certified 8-hour ozone air quality monitoring data for 2008 through 2010 show that the Philadelphia Area has attained the 1997 8-hour ozone NAAQS.

## **IV. What are the Effects of these Proposed Actions?**

If finalized, the proposed actions will not constitute a redesignation to attainment under section 107(d)(3) of the CAA. The designation status of the Philadelphia Area will remain

nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan.

#### **A. Proposed Determination of Attainment by the Attainment Date**

EPA is proposing to determine that the Philadelphia Area has attained the 1997 8-hour ozone NAAQS by its applicable attainment date of June 15, 2011. Once this determination of attainment is made final, EPA will have met its requirement pursuant to CAA sections 181(b)(2)(A) and 179(c) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date. The effect of a final determination of attainment by the area's attainment date will be to discharge EPA's obligation under CAA sections 181(b)(2)(A) and 179, and to establish that, in accordance with CAA section 181(b)(2)(A), the area will not be reclassified for failure to attain by its applicable attainment date.

#### **B. Clean Data Determination**

EPA is proposing to determine that the Philadelphia Area is attaining the 1997 8-hour ozone NAAQS. Once EPA finalizes this determination of attainment, the CAA requirement for the Philadelphia Area to submit an attainment demonstration and the associated RFP plan, RFP contingency measure, RACM analysis, contingency measures, and any other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS would be suspended for so long as the area continues to attain the 1997 8-hour ozone NAAQS.



Although these requirements can be suspended with an approved clean data determination, EPA is not precluded from acting upon these elements, which were submitted to EPA in June and October of 2007 by the States of Delaware, Maryland, and New Jersey and the Commonwealth of Pennsylvania. In fact, EPA approved each state's RFP plans, RFP contingency measures, and RACM analyses for the Philadelphia Area in separate rulemaking actions. Therefore, these requirements have been fulfilled. EPA approved the RFP plans, RFP contingency measures, and RACM analyses from Delaware, Maryland, New Jersey, and Pennsylvania on April 8, 2010, June 11, 2010, May 15, 2009, and February 7, 2011, respectively. See 75 FR 17863, 75 FR 33172, 74 FR 22837, and 76 FR 6559.

The clean data determination will:

- (1) suspend the requirements to submit an attainment demonstration, contingency measures for attainment, and any other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS;
- (2) continue until such time, if any, that EPA (i) redesignates the area to attainment at which time those requirements no longer apply, or (ii) subsequently determines that the area has violated the 1997 8-hour ozone NAAQS;
- (3) be separate from, and not influence or otherwise affect, any future designation determination or requirements for the area based on any new or revised ozone NAAQS; and
- (4) remain in effect regardless of whether EPA designates this area as a nonattainment area for purposes of any new or revised ozone NAAQS.

## **V. What is EPA's Analysis of the Relevant Air Quality Data?**

Consistent with the requirements contained in 40 CFR part 50, EPA has reviewed the ozone ambient air monitoring data for the monitoring period from 2008 through 2010 for the Philadelphia Area, as recorded in the EPA Air Quality System (AQS) database. On the basis of that review, EPA has concluded that this area attained the 1997 8-hour ozone NAAQS based on data for the 2008- 2010 ozone seasons.

Under EPA regulations at 40 CFR part 50, the 1997 8-hour ozone standard is attained at a site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.08 ppm (i.e., 0.084 ppm, based on the rounding convention in 40 CFR part 50, appendix I). This 3-year average is referred to as the design value. When the design value is less than or equal to 0.084 ppm at each monitoring site within the area, then the area is meeting the NAAQS.

Also, the data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness as determined in appendix I of 40 CFR part 50.

Table 1 shows the ozone design values for each monitor in the Philadelphia Area for the years 2008-2010. All 2008-2010 design values are below 0.084 ppm, and all monitors meet the data completeness requirements. Therefore, the Philadelphia Area has attained the 1997 8-hour ozone NAAQS, considering 2008-2010 data.

**Table 1. 2008-2010 Philadelphia Area 1997 8-Hour Ozone Design Values**

State	County	Site ID	2008-2010 Design Value (ppm)	2008-2010 Average Percent Data Completeness
DE	Kent	10-001-0002	0.074	100
	New Castle	10-003-1007	0.075	92
		10-003-1010	0.076	91
		10-003-1013	0.075	98
	Sussex	10-005-1002	0.077	99
		10-005-1003	0.077	97
MD	Cecil	24-015-0003	0.080	94
NJ	Atlantic	34-001-0006	0.074	96
	Camden	34-007-1001	0.080	97
	Cumberland	34-011-0007	0.076	98
	Gloucester	34-015-0002	0.081	98
	Mercer	34-021-0005	0.078	98
	Ocean	34-029-0006	0.081	98
PA	Bucks	42-017-0012	0.083	99
	Chester	42-029-0100	0.076	97
	Delaware	42-045-0002	0.074	98
	Montgomery	42-091-0013	0.078	98
	Philadelphia	42-101-0004	0.066	97
		42-101-0024	0.082	95

EPA's review of the data indicates that the Philadelphia Area has met the 1997 8-hour ozone NAAQS. Additional information on air quality data for the Philadelphia Area can be found in the TSD.

## **VI. Proposed Action**

EPA is proposing to make two determinations regarding the Philadelphia Area. First, EPA is proposing to make a determination that the Philadelphia Area has attained the 1997 8-hour NAAQS. If EPA finalizes this determination, the requirements to submit an attainment demonstration, contingency measures for attainment, and any other planning requirements related to attainment of the 1997 8-hour ozone NAAQS will be suspended, as provided in 40 CFR section 51.918, so long as the area continues to attain the 1997 8-hour ozone NAAQS.

Second, pursuant to sections 179 and 181(b)(2)(A) of the CAA, EPA is proposing to determine that the Philadelphia Area has attained the 1997 8-hour ozone NAAQS by its attainment date, June 15, 2011. These proposed determinations are based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2008 - 2010 monitoring period. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

## **VII. Withdrawal Action.**

Based on ambient air quality monitoring data that demonstrates attainment of the 1997 8-hour ozone NAAQS, EPA is withdrawing the May 8, 2009 proposed disapprovals of Delaware's, Maryland's, New Jersey's, and Pennsylvania's 8-hour ozone attainment demonstrations for the Philadelphia Area. (74 FR 21599, 74 FR 21588, 74 FR 21578, and 74 FR 21604)

## **VIII. Statutory and Executive Order Reviews**

This action proposes to make a determination of attainment based on air quality, and would, if finalized, result in the suspension of certain federal requirements, and would not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed determination that the Philadelphia Area has attained the 1997 8-hour ozone NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 et seq.

October 25, 2011  
Dated:

W. C. Early, Acting  
Regional Administrator,  
Region III.

November 22, 2011

Dated:

Judith A. Enck,  
Regional Administrator,  
Region 2.

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